THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 795 of 2006

Date of Decision: 16 -10 - 2006

Sher Singh **.....Appellant**

v.

Union of India and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Rao D.S.Nirban, Advocate
for the appellant.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal has been filed by the plaintiff against concurrent findings recorded by the trial Court and the lower Appellate Court dismissing the suit filed by the plaintiff.

The plaintiff who had served in the Army from 26.10.1971 upto 11.10.1985 had filed a suit for declaration to the effect that the impugned order not granting service gratuity, service pension or pro-rata pension on the basis of service rendered by him in the Army was wrong, illegal and against law and had claimed pension on the basis of the service rendered by him in the Army. However, when evidence was recorded before the trial Court it transpired that the plaintiff had not been discharged simpliciter. Actually the plaintiff was involved in a disciplinary case on the ground that he at some time in April/May, 1982 handed over to a civilian tea ration wraped in a page torn from a confidential register and thus communicated information to a person not authorised to the same. In connection with the said allegation the plaintiff was detained in Military Jail from 10.4.1984 to 17.2.1985 and thereafter from 23.2.1985 to 8.10.1985. His case

was examined upto the level of Chief of the Army Staff and it was on the recommendation of the Chief of the Army Staff that the order of discharge was made. The lower Appellate Court has recorded that the plaintiff had not come to the Court with clean hands and rather he had tried to mis-state the facts. This is clear from the following observations recorded by the lower Appellate Court:-

> "12. Pointed and probing cross-examination effected on Sher Singh (PW3) has revealed that he is not a truthful witness. He has tried to hide more than he had disclosed. Notwithstanding the fact that he himself has produced his copy of discharge. As mentioned earlier, he has denied that he was discharged from service on the basis of punishment i.e. on administration dated 29.10.1988 that payment of Army Group Insurance Saving Benefits was made to the Appellant but the appellant has even denied this fact."

It is further necessary to note that in fact the order of discharge had not been specifically challenged by the plaintiff in the civil suit. After finding that the discharge was in fact as a measure of punishment, the trial Court held that since the plaintiff had not rendered 15 years of service, he was not entitled to pension.

After going through the judgments I do not find any error in the view taken by both the Courts below. It is the admitted position that the plaintiff did not complete 15 years of service as a result of which he could claim pension from the respondents. Moreover, since he was discharged on disciplinary/administrative grounds, the Courts below have also found that the plaintiff was not entitled to pension.

No substantial question of law arises for consideration in this regular second appeal. The same is accordingly dismissed in limine.

(P.S.PATWALIA)
JUDGE

October 16, 2006.

RC